

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
BRYSON CITY DIVISION
CIVIL CASE NO. 2:09-cv-00046-MR
[CRIMINAL CASE NO. 2:06cr25-MR-1]**

SAMUEL EDDIE PHEASANT,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

)
)
)
)
)
)
)
)
)
)
)

ORDER

THIS MATTER is before the Court on consideration of Petitioner's pro se "Rule 59(e)" motion to alter or amend judgment, or in the alternative, Petitioner's request for a certificate of appealability. [Doc. 28].

On September 6, 2012, the Court entered a Memorandum of Decision and Order granting the Government's motion for summary judgment and denying and dismissing Petitioner's Motion to Vacate, Set Aside or Correct Sentence, filed pursuant to 28 U.S.C. § 2255. Therein the Court declined to issue a certificate of appealability. [Doc. 24]. The Clerk entered a judgment in conformity with the Court's order of dismissal that same day. On November 13, 2012, Petitioner filed the present motion,

contending that he is entitled to relief under Rule 59(e) of the Federal Rules of Civil Procedure.

A motion to alter or amend a judgment must be filed within 28 days after the judgment is entered, which, as noted, was on September 6, 2012. Thus, Petitioner's motion should have been filed by October 4, 2012. Petitioner's motion was filed, at the earliest, on October 16, 2012, the day Petitioner avers that he placed the motion in the hands of prison authorities for mailing. [Doc. 28 at 10]. See Houston v. Lack, 487 U.S. 266, 276, 108 S.Ct. 2379, 101 L.Ed.2d 245 (1988) (finding that prisoner mail is deemed filed when it is handed over to prison authorities for forwarding the clerk of court). Accordingly, Petitioner's motion is untimely under Rule 59(e) and will be dismissed.

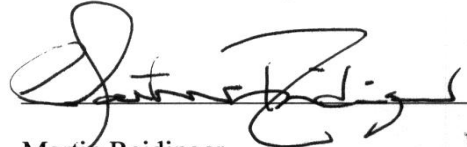
Petitioner's motion for a certificate of appealability is denied for the reasons stated in the Court's September 6, 2012 Memorandum of Decision and Order. [Doc. 24].

IT IS, THEREFORE, ORDERED that Petitioner's Motion to Reconsider [Doc. 28] is **DENIED**.

IT IS FURTHER ORDERED that pursuant to Rule 11(a) of the Rules Governing Section 2255 Cases, this Court declines to issue a certificate of appealability.

IT IS SO ORDERED.

Signed: January 16, 2013


Martin Reidinger
United States District Judge

